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No. 174

In the Supreme Court of the United States

OCTOBER TERM, 1969

WILLIAM SHEINER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Having waived trial by jury, petitioner was convicted on 34 counts charging use of the mails and interstate wires in furtherance of a fraudulent scheme (18 U.S.C. 1341, 1343); on 3 counts charging sale or possession of fraudulently altered United States coins (18 U.S.C. 331); and on 1 count charging a conspiracy to commit the offenses. *United States* v. *Sheiner*, 273 F. Supp. 977 (S.D.N.Y.). On November 21, 1967, petitioner was sentenced to three months' imprisonment on the first count; imposition of concurrent two-year sentences on the remaining counts was suspended and he was placed on probation for two years, to commence upon the expiration of the three months' sentence.

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Petitioner thereafter moved to set aside the judgment, pursuant to 28 U.S.C. 2255, on the ground that he had been denied effective assistance of counsel because of a conflict of interests between himself and his co-defendant who were represented by the same retained counsel. Following a hearing on this issue, the district court (by the same judge before whom the case had been tried) denied the motion on May 21, 1968 (Pet. App. 15–19). The court of appeals affirmed the judgment of the district court on April 4, 1969.[1]

The sole question presented is whether petitioner was deprived of the effective assistance of counsel by virtue of the attorney's joint representation of petitioner and the co-defendant. Both courts below carefully examined this claim and found that petitioner had made an informed and considered choice to proceed with a single retained counsel. We rely upon the opinions below and, for the reasons stated therein, urge that the petition for a writ of certiorari should be denied. There is no conflict among the Circuits as to the facts presented here. In none of the cases upon which petitioner relies (Pet. 11) did the trial judge, as here, personally apprise petitioner of the possibility of a conflict of interest and assure himself that petitioner nonetheless wished to proceed with counsel also representing a co-defendant. Indeed the opinions in both *Ford* v. *United States*, 379 F. 2d 123 (C.A. D.C.), and *Campbell* v. *United States*, 352 F. 2d 359

[1] The facts underlying the conviction are summarized in the opinion of the district court (273 F. Supp. at 980–984) and in the opinion of the court of appeals (Pet. App. A3–A9). The co-defendant's petition, which challenges the sufficiency of the evidence, is before this Court in No. 205 Misc., O.T., 1968.

(C.A.D.C.), suggested that trial courts follow a procedure similar to that employed by the district judge here.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1969.

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